



**BAC 7710-FW-P**

**POSTAL REGULATORY COMMISSION**

**39 CFR Part 3020**

**[Docket No. RM2015-6; Order No. 2543]**

**Changes or Corrections to Mail Classification Schedule**

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is issuing a set of final rules addressing changes and corrections to the Mail Classification Schedule (MCS). The final rules establish procedures for material changes in services offered in connection with products and corrections to product descriptions. Relative to the proposed rules, all changes are minor and non-substantive.

**DATES:** *Effective* [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202-789-6820.

## **SUPPLEMENTARY INFORMATION:**

### **Regulatory History**

72 FR 63662, November 9, 2007  
79 FR 69781, November 24, 2014

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#### **I. Introduction**

In this Order, the Commission adopts final rules regarding requests to change or correct the Mail Classification Schedule (MCS).

#### **II. Background**

The Commission is charged with maintaining accurate product lists. See 39 U.S.C. 3642. In Docket No. RM2007-1, the Commission promulgated rules establishing the MCS as the vehicle for presenting the product lists with necessary descriptive content.<sup>1</sup> Those rules are codified at 39 CFR part 3020, subparts A-F.

On November 14, 2014, the Commission issued a notice of proposed rulemaking and requested comments on proposed rules regarding requests to change or correct the MCS (specifically, replacing 39 CFR part 3020, subpart

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<sup>1</sup> Docket No. RM2007-1, Order No. 26, Order Proposing Regulations to Establish a System of Ratemaking, August 15, 2007, at 85.

E).<sup>2</sup> Order No. 2250 described how the regulations did not satisfactorily address MCS changes that were more significant than minor corrections to the MCS but did not rise to the level of a product list modification. The proposed rules distinguished between material changes and minor corrections to the descriptive content in the MCS and proposed procedures for the initiation and review of each type of change. The notice of proposed rulemaking was also published in the **Federal Register**. 79 FR 69781 (November 24, 2014).

The Postal Service and the Public Representative submitted initial comments suggesting changes to the rules proposed in Order No. 2250.<sup>3</sup> The Postal Service also submitted reply comments.<sup>4</sup> After consideration of the comments submitted, the Commission adopts the proposed rules, modified as described below.

### **III. Section-by-Section Analysis**

In general, the Postal Service and Public Representative offered positive comments with respect to the Commission's proposed rules. See, e.g., Postal Service Comments at 1, PR Comments at 3. Both commenters also offered suggestions that they assert would improve or clarify the proposed rules. The comments primarily focused on two issues: the contents of the supporting

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<sup>2</sup> Notice of Proposed Rulemaking on Changes and Corrections to the Mail Classification Schedule, November 14, 2014 (Order No. 2250).

<sup>3</sup> Initial Comments of the United States Postal Service, December 24, 2014 (Postal Service Comments); Public Representative Comments, December 24, 2014 (PR Comments).

<sup>4</sup> Reply Comments of the United State Postal Service, January 8, 2015 (Postal Service Reply Comments).

justification for a material change to a MCS product description and the provisions concerning the Commission's review of requests to make either a material change or minor correction to the MCS. The Commission's analysis of the comments received is discussed below.

A. Section 3020.81 (Supporting justification for changes to product descriptions)

Section 3020.81 of the proposed rules lists the supporting justification that must be filed by the Postal Service when it proposes a material change to a product description in the MCS. As proposed, paragraph (c) required the Postal Service to describe the impact that the proposed material changes will have on users of the product and on competitors as part of its supporting justification for its request to make a material change to a product description.

The Postal Service comments that the requirement in proposed section 3020.81(c) is more strenuous than the requirement that currently applies to modifications of the product lists. Postal Service Comments at 2. The Postal Service suggests that section 3020.81(c) requires only that it "[p]rovide any available information that describes the likely impact of the changes on users of the product and on competitors." *Id.* at 3. The Postal Service states its alternative wording would establish the same standard that currently applies to modifications of the product lists. *Id.*

In contrast, the Public Representative suggests that paragraph (c) be broadened to require the Postal Service to "[d]escribe the views of those who use the product on the appropriateness of the proposed action and the impact that

the changes will have on users of the product and on competitors and on small business concerns.” PR Comments at 12. He asserts that the Commission’s proposed rules eliminate two considerations required by 39 U.S.C. 3642(b)(3) and the reintroduction of those considerations would protect the product lists from erosion through incremental changes to a product description, which could eventually modify the product itself, to the detriment of users. *Id.* at 11-12.

The Postal Service responds that the Public Representative’s suggestion appears to impose an obligation on it “to obtain certainty” regarding the impact that a material MCS product description change will have before it requests Commission review of the change. Postal Service Reply Comments at 2-3. The Postal Service hypothesizes that such a requirement would require it to “conduct market research or otherwise compile data that reflect some unspecified level of scientific or empirical analysis of the impact of an MCS product description change on customers, competitors and small businesses.” *Id.* at 3. The Postal Service suggests the following revision to the Public Representative’s proposal for paragraph (c): Provide available information describing the views of those who use the product on the appropriateness of the proposed action and the likely impact of the changes on users of the product and on competitors and on small business concerns. *Id.*

The Commission declines to adopt the particular revisions proposed by either commenter. Although the Public Representative and Postal Service offer different suggested language, both commenters attempt to establish a standard

for material changes to product descriptions that is similar to the standard that applies to modifications of the product lists. See Postal Service Comments at 3; PR Comments at 11. However, the Commission's intent in establishing the standard for material changes was to strike a middle ground between the showing that is required for modifications to the product lists and the showing for corrections to MCS product descriptions.

Nevertheless, the Commission recognizes that the paragraph, as originally proposed, could be interpreted to require a more burdensome showing by the Postal Service than that required for modifications of the product lists. Therefore, the Commission adopts the following minor revision to proposed section 3020.81(c) – the addition of the word *likely* – so that section 3020.81(c) will read as follows: Describe the *likely* impact that the changes will have on users of the product and on competitors. This change tracks the Commission's original intent to allow the Postal Service to make a showing that is less onerous than the showing that is required for modifications to the product lists but more robust than the showing for corrections to MCS product descriptions.

B. Provisions concerning Commission review (3020.83 and 3020.92)

Sections 3020.83 and 3020.92 of the proposed rules describe the actions the Commission may take in response to a Postal Service request to either materially change or correct a product description, respectively. These provisions are nearly identical in the proposed rules.

The Public Representative suggests three revisions to proposed section 3020.92. First, he suggests revising section 3020.92(b) to explicitly state that a minor correction would be made if “not a material change to the product descriptions” and “consistent with the provisions of title 39, subject to editorial corrections.” PR Comments at 8. The Postal Service does not object to the Public Representative’s suggestion but comments that the second change may be “superfluous.” Postal Service Reply Comments at 2. The Public Representative’s suggested additions are already implied by the proposed language. Accordingly, the Commission declines to adopt the Public Representative’s suggestions as unnecessary.

Second, the Public Representative comments that the elimination of the statement in the current rule that the Commission will make the change “to coincide with the effective date of the proposed change” introduces “ambiguity about the Commission’s intended action time.” PR Comments at 8. The Postal Service does not comment on the Public Representative’s suggestion. The Commission agrees with the Public Representative that the proposed rule is unclear concerning when the Commission will make the change to the MCS. Therefore, the Commission adopts the Public Representative’s suggestion and adds language to state that the change to the MCS will coincide with the effective date of the proposed change to both sections 3020.83 and 3020.92.

Third and finally, the Public Representative suggests “in the interests of clarity and economy” combining sections 3020.83 and 3020.92 into a section

numbered 3020.100 and named “Commission Review and Action.” *Id.* at 12.

The Postal Service does not comment on the Public Representative’s suggestion. The format of the proposed rules was designed to have separate sections for material changes (39 CFR 3020.80 *et seq.*) and minor corrections (39 CFR 3020.90 *et seq.*). Accordingly, the Commission declines to adopt the Public Representative’s suggestion.

#### C. Additional minor corrections

In order to improve upon the clarity of the rules proposed in Order No. 2250, the Commission makes the following editorial changes and minor corrections:

- Rule 3020.81 contains an editorial change to the title of the rule.
- Rule 3020.82 contains an editorial change to the title of the rule.
- Rule 3020.83 contains an editorial change to the title of the rule.
- Rule 3020.83(e) contains a minor correction.
- Rule 3020.91 contains an editorial change to the title of the rule.
- Rule 3020.92 contains an editorial change to the title of the rule.
- Rule 3020.92(e) contains a minor correction.

#### IV. Ordering Paragraphs

*It is ordered:*



1. Part 3020 of title 39, Code of Federal Regulations, is amended as set forth below the signature of this Order, effective 30 days after publication in the **Federal Register**.

2. The Secretary shall arrange for publication of this order in the **Federal Register**.

### **List of Subjects in 39 CFR Part 3020**

Administrative practice and procedure, Postal Service.

For the reasons discussed in the preamble, the Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

### **Part 3020—PRODUCT LISTS**

1. The authority citation of part 3020 continues to read as follows:

**Authority:** 39 U.S.C. 503; 3622; 3631; 3642; 3682.

2. Revise subpart E to read as follows:

### **Subpart E—Requests Initiated by the Postal Service to Make Material Changes or Minor Corrections to the Mail Classification Schedule**

Sec.

3020.80 Material changes to product descriptions.

3020.81 Supporting justification for material changes to product descriptions.

3020.82 Docket and notice of material changes to product descriptions.

3020.83 Commission review of material changes to product descriptions.

3020.84–3020.89 [Reserved]

3020.90 Minor corrections to product descriptions.

3020.91 Docket and notice of minor corrections to product descriptions.

3020.92 Commission review of minor corrections to product descriptions.

**Subpart E—Requests Initiated by the Postal Service to Make Material  
Changes or Minor Corrections to the Mail Classification Schedule**

**§ 3020.80 Material changes to product descriptions.**

(a) Whenever the Postal Service proposes material changes to a product description in the Mail Classification Schedule, no later than 30 days prior to implementing the proposed changes, it shall submit to the Commission a request to change the product description in the Mail Classification Schedule.

(b) The request shall:

(1) Include a copy of the applicable sections of the Mail Classification Schedule and the proposed changes therein in legislative format; and

(2) Provide all supporting justification for the changes upon which the Postal Service proposes to rely.

**§ 3020.81 Supporting justification for material changes to product descriptions.**

(a) Supporting justification for changes to a product description in the Mail Classification Schedule shall include a description of, and rationale for, the proposed changes to the product description; and the additional material in paragraphs (b) and (c) of this section.

(b)(1) As to market dominant products, explain why the changes are not inconsistent with each requirement of 39 U.S.C. 3622(d) and part 3010 of this chapter; or

(2) As to competitive products, explain why the changes will not result in the violation of any of the standards of 39 U.S.C. 3633 and part 3015 of this chapter.

(c) Describe the likely impact that the changes will have on users of the product and on competitors.

**§ 3020.82 Docket and notice of material changes to product descriptions.**

(a) The Commission shall take the actions identified in paragraphs (b) through (e) of this section.

(b) Establish a docket for each request to change a product description in the Mail Classification Schedule;

(c) Publish notice of the request on its website;

(d) Designate an officer of the Commission to represent the interests of the general public in the docket; and

(e) Provide interested persons with an opportunity to comment on whether the proposed changes are consistent with title 39 and applicable Commission regulations.

**§ 3020.83 Commission review of material changes to product descriptions.**

(a) The Commission shall review the request and any comments filed. The Commission shall take one of the actions identified in paragraphs (b) through (g) of this section.

(b) Approve the proposed changes, subject to editorial corrections, and change the Mail Classification Schedule to coincide with the effective date of the proposed change;

(c) Reject the proposed changes;

(d) Provide the Postal Service with an opportunity to amend the proposed changes;

(e) Direct the Postal Service to make an appropriate filing under a different section;

(f) Institute further proceedings; or

(g) Direct other action that the Commission considers appropriate.

**§§ 3020.84–3020.89 [Reserved]**

**§ 3020.90 Minor corrections to product descriptions.**

(a) The Postal Service shall ensure that product descriptions in the Mail Classification Schedule accurately represent the current offerings of the Postal Service.

(b) The Postal Service shall submit minor corrections to product descriptions in the Mail Classification Schedule by filing notice with the Commission no later than 15 days prior to the effective date of the proposed corrections.

(c) The notice shall:

(1) Explain why the proposed corrections do not constitute material changes to the product description for purposes of § 3020.80;

(2) Explain why the proposed corrections are consistent with any applicable provisions of title 39; and

(3) Include a copy of the applicable sections of the Mail Classification Schedule and the proposed corrections therein in legislative format.

**§ 3020.91 Docket and notice of minor corrections to product descriptions.**

(a) The Commission shall take the actions identified in paragraphs (b) through (e) of this section.

(b) Establish a docket for each proposal to correct a product description in the Mail Classification Schedule;

(c) Publish notice of the proposal on its website;

(d) Designate an officer of the Commission to represent the interests of the general public in the docket; and

(e) Provide interested persons with an opportunity to comment on whether the proposed corrections are consistent with title 39 and applicable Commission regulations.

**§ 3020.92 Commission review of minor corrections to product descriptions.**

(a) The Commission shall review the notice and any comments filed. The Commission shall take one of the actions identified in paragraphs (b) through (g) of this section.

(b) Approve the proposed corrections, subject to editorial corrections, and change the Mail Classification Schedule to coincide with the effective date of the proposed change;

(c) Reject the proposed corrections;

(d) Provide the Postal Service with an opportunity to amend the proposed corrections;

(e) Direct the Postal Service to make an appropriate filing under a different section;

(f) Institute further proceedings; or

(g) Direct other action that the Commission considers appropriate.

By the Commission.

**Ruth Ann Abrams,**

*Acting Secretary.*

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